

REMARKS

Applicant respectfully submits that this amendment is in full compliance with Rule 116 because it raises no new issues and does not increase the total number of pending claims. Further, applicant respectfully submits that no additional searching is warranted or required. An early entry of this amendment under rule 116 is respectfully requested.

This paper is filed in response to the office action mailed on May 20, 2004. Claims 2-16, 18, 23-28, 40-51, 53-56, 58-63, 65-68 and 70 have been restricted and therefore at least temporarily have been withdrawn from consideration. Claims 1, 17, 19-22, 39, 52, 57, 64 and 69 stand rejected. Claims 1, 20, 52 and 64 have been amended; no claims have been canceled; therefore, claims 1, 17, 19-22, 39, 52, 57, 64 and 69 remain pending.

With respect to the rejections based upon the prior art, pending claims 1, 17, 19-22, 39, 52, 57, 64 and 69 all stand rejected under 35 USC § 102 as being anticipated by U.S. Patent Application Publication No. 2004/0249436 ("Aznoian"), U.S. Patent No. 5,477,856 ("Lundquist") or U.S. Patent No. 6,246,914 ("de la Rama").

Applicants respectfully submit that all anticipation rejections fail to meet the criteria set forth by the MPEP and the relevant case law. Specifically, under MPEP § 2131,

[t]o anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Citing, *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

None of the prior teaches or suggests a circumferentially extending slit through a tubular wall of a hypotube to provide increased flexibility to a section of the tube disposed between a solid proximal portion of the tube and in close proximity to a distal stinger.

The first anticipation rejection of the independent claims is based upon Aznoian. However, Aznoian does not teach or suggest a slit that extends through the tubular wall of a hypotube or tubular shaft as recited in each pending independent claim. In contrast, Aznoian teaches an accordion-like structure only without any slits that extend through a tubular wall.

Therefore, Aznoian cannot serve as an anticipating reference and the anticipation rejection of claims 1, 17, 19-22, 39, 52, 57, 64 and 69 is improper and should be withdrawn.

Next, the office action rejects claims 1, 17, 19-22, 39, 52, 57, 64 and 69 as being anticipated by Lundquist. In response, each pending independent claim has been amended to recite that the at least one slit is disposed in close proximity to the recited stinger. This configuration is not taught or suggested by Lundquist. Specifically, Lundquist merely teaches a tubular section with numerous slots but that tubular section is not disposed anywhere near an elongated stinger. The tubular section 46 of Lundquist does not itself form a stinger as recited by each pending independent claim of the present application and therefore Lundquist does not teach or suggest a slit disposed next to a stinger and therefore fails to teach or suggest the combination recited in each pending independent claim.

Accordingly, applicant respectfully submits that the rejection of claims 1, 17, 19-21, 39, 52, 57, 64 and 69 as being anticipated by Lundquist is improper and should be withdrawn.

Finally, the office action rejects claims 1, 20, 52 and 64 as being anticipated by de la Rama. However, de la Rama, like Lundquist, fails entirely to teach or suggest any slit disposed immediately adjacent to an elongated stinger. Further, the slits that are disposed in section 8 (Fig. 1) of Lundquist are, in fact, disposed in a separate tubular material from the distal portion 9 (see Fig. 5). Thus, not only does de la Rama fail to teach or suggest slits disposed adjacent to an elongated stinger, de la Rama also fails to teach the formation of an elongated stinger from the same tubular structure in which the slits are disposed as recited in each pending independent claim of the present application.

Accordingly, applicant respectfully submits that the anticipation rejection of claims 1, 20, 52 and 64 based upon de la Rama is improper and should be withdrawn.

Having all prior art rejections been traversed, applicants respectfully submit that this application is in a condition for allowance in an early action so indicating is respectfully requested. Applicants also respectfully re-solicit the reconsideration of all withdrawn dependent apparatus claims for the reasons set forth in the papers dated August 9, 2004 and December 2, 2004.

The Commissioner is authorized to charge any fee deficiency required by this paper, or credit any overpayment, to Deposit Account No. 13-2855.

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Respectfully submitted,

By 

Michael R. Hull

Registration No.: 35,902

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant